



# Chapter 0400-12-01

## Hazardous Waste Management

Revising the Definition of Solid Waste

A long journey not yet completed

**By Wayne Gregory**

# October 30, 2008

- EPA issued a final rule
- Expanded non-waste determinations
- Reclamation under the control of the Generator
- Reclamation by off-site transfers
- Limited notification of reclamation activities
- Legitimacy factors for the new exemptions

# October 30, 2008

- Authorized State Hazardous Waste Programs were encouraged to adopt, but not required to adopt
- Tennessee did not adopt a program citing difficulties with the new exemptions
- The Stakeholders did not petition for adoption



# January 13, 2015

- EPA issues the revised October 30, 2008 final rule
- Legitimacy criteria was codified for all recycling
- Defined the prohibition of sham recycling
- Additional record keeping requirement for speculative accumulation
- Revisions to various reclamation exemptions



## 2015

- January 13 - Authorized state hazardous waste programs were *required* to adopt the more stringent portions of the new federal rule
- Resulted in more stakeholder interest in this rulemaking
- Meetings were held to discuss the federal rules and their impact on Tennessee
- April - several petitions were filed to challenge the federal rules

## 2015

- **July 14 - TDEC files a rulemaking hearing notice with the Secretary of State**
- **September 8 - The rulemaking hearing was held**
- **Comments received resulted in rule revisions**
- **December 2 - The amended rules were adopted by the UST & SWDC Board**

## From 2015 to 2017

- The amendments were given a careful legal review by OGC and the Attorney General's Office
- May 9, 2017 - Amended rules were filed with the Secretary of State, and scheduled to become effective on August 8, 2017
- July 20, 2017 – Reviewed by the Joint Government Operations Committee



**July 7, 2017**

**The U.S. Court of Appeals, D.C. Circuit issued an opinion:**

- **Ruling that Factor 4 of the “legitimacy test” is vacated insofar as it applies to hazardous secondary materials via § 261.2(g) [Sham recycling]**
- **Also vacated parts of the Verified Recycler Exclusion**
- **However, the mandate was not issued due to petitions for panel rehearing**



**July 20, 2017**

- **Amendments were scheduled for review before the Joint Government Operations Committee**
- **TDEC and the Tennessee Chamber of Commerce and Industry had an interest in staying the effective date of the amendments**
- **The Joint Government Operations Committee stayed the rules effective date by 75 days**
- **Making the new effective date October 21, 2017**

# September 6, 2017

**UST & SWDC Board was presented with 3 options:**

- 1. Withdraw the rulemaking and initiate a new rulemaking;**
- 2. Allow the pending amendments to become effective contingent upon the issuance of an enforcement moratorium; or**
- 3. Stay the effective date of the amendments for an additional 75 days, to January 4, 2018.**



# December 6, 2017

The UST & SWDC Board was again presented with 3 options:

1. Withdraw the rulemaking and initiate a new rulemaking;
2. Allow the pending amendments to become effective contingent upon the issuance of an enforcement moratorium; or
3. File an Emergency Rule that would delay the effective date of the specific amendments impacted by the federal court's ruling and immediately file a remedial rulemaking with the Secretary of State.



## January 2018

- January 4 – The Emergency Rule became effective
- This delayed the effective date of specific amendments impacted by the Federal Court until July 2, 2018
- January 30 – Remedial rulemaking hearing was held
- February 7 – Remedial rulemaking was adopted by the UST & SWDC Board
- March 6 – The U.S. Court of Appeals, D.C. Circuit modified its July 7, 2017 ruling

# 2018

- **March 21 – The remedial rulemaking was filed with the Secretary of State to become effective on June 19, 2018**
- **A new rulemaking is required to respond to the March 6, 2018 D.C. Circuit ruling.**
- **TDEC is reviewing the opinion to determine the next steps**
- **EPA may issue a response to the opinion this month**

## The Long Journey Continues . . .



If you have any further questions, please contact  
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